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In the

Supreme Court of the United States

October Term, 1984

WILLIAM C. COX, PETITIONER,

versus

SUPREME COURT OF FLORIDA and the
FLORIDA BOARD OF BAR EXAMINERS
RESPONDENTS

PETITION FOR WRIT OF CERTIORARI to the SUPREME COURT OF FLORIDA

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Questions Presented for Review

Is the denial of reciprocity to a licensed attorney by the State of Florida a denial of said attorneys' constitutional rights?

Listing of All Parties to the Proceeding Pursuant to Rule 28.1

1. William C. Cox
2. Supreme Court of Florida
3. Florida Board of Bar Examiners

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In The

Supreme Court of the United States

October Term, 1984

William C. Cox, Petitioner,

versus

Supreme Court of Florida and the

Florida Board of Bar Examiners,
Respondents

Petition For A Writ of Certiorari to

the Supreme Court of Florida

Petitioner, William C. Cox, requests that a Writ of Certiorari be issued to review the judgment rendered by the Florida Supreme Court in these proceedings.

OPINIONS BELOW

The opinion-judgment of the Florida Supreme Court rendered 2-5-85 is located in Appendix A, infra.

Jurisdiction

1. The decision of the Supreme Court of Florida of which petitioner seeks review was rendered on February 5, 1985.

2. The jurisdiction of this Honorable Court is invoked under 28 U.S.C. 2101(C).

PROVISIONS CONSTRUED:

(Note: Below provisions cited in text. Consult table of authorities for location)

15 U.S.C. 1

Rules of the Supreme Court of Florida Relating to Admissions to the Bar Article I, Section 1

Rules of the Supreme Court of Florida Relating to Admission to the Bar Article V, Section 1 and 2

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STATEMENT OF THE CASE

Petitioner, William C. Cox, an attorney at law, licensed in Louisiana State and Federal Courts desires to move to Miami, Florida to live where he was raised and to further his legal career by moving to Florida where there are more career opportunities. Louisiana is in an economic slump because of the problems in the oil industry. Petitioner's parents and siblings reside in Florida. Petitioner left Miami, Florida only to attend law school being unable to afford the tuition at the University of Miami Law School near his home in Miami.

Petitioner currently is a government attorney for the State of Louisiana child abuse program and is active in implementing federal child abuse prevention laws, 42 U.S.C. 670 et seq., for the State of Louisiana.

Petitioner has a Juvenile Law practice, specializes in Juvenile Law and is writing a book on Juvenile Law. Petitioner desires to

move to Florida and work in the child abuse program of Florida.

Petitioner has been actively practicing law in the State of Louisiana continuously for seven (7) years.

Petitioner took the entire Florida Bar Examination on July 24 and 25 of 1984. Petitioner passed the Multistate Professional Responsibility Examination portion of the Florida Bar Examination with a scaled score of 96. A passing scaled score was 70.

Petitioner was 6.5 points from passing the other portions of the entire Florida and Multistate Bar Examination. Petitioner received a grade of 124.5 and a grade of 131 was selected as a passing score at that time. The required passing score has fluctuated over time. Petitioner received a report from the Florida Board of Bar Examiners on October 1984. Same indicated that petitioner had passed the Multistate Professional Responsibility Examination. However, said report advised I was

unsuccessful in passing the other portions of the Bar Examination. My scaled score on the Multistate examination was 124 and my scaled score on the Florida portion of the examination was 125. The average scaled score was 124.5. A passing score was chosen as 131 as of that examination.

After receiving the examination results on October 1984, petitioner filed a Petition for Reconsideration with the Supreme Court of Florida and the Florida Board of Bar Examiners pursuant to Rules of the Supreme Court of Florida Relating to Admissions to the Bar Article III B. section 4.a.

The Petition for Reconsideration was denied by the Supreme Court of Florida, without reasons, on February 5, 1985.

As a result of the judgment rendered by the Supreme Court of Florida, the petitioner, William C. Cox, attorney at law, has timely petitioned this Honorable Court for

the issuance of a writ of certiorari to the Supreme Court of Florida.

Reasons for Granting this Writ

I. Preliminary Summary

Special and important reasons call for the issuance of a writ of certiorari in this case (Rule 17). A State court, the Supreme Court of Florida, has decided an important question of Federal law which has not been, but should be, settled by this Court.

II. REQUIRING LICENSED ATTORNEYS TO TAKE THE FULL BAR EXAMINATION CONSTITUTES A VIOLATION OF THE SHERMAN ACT, 15 U.S.C. 1 ET SEQ.

Florida requires licensed attorneys who wish to practice law in the State to submit to the Florida Bar Examination. Rules of the Supreme Court of Florida Relating to Admissions to the Bar provide in Article I, Section 1:

> Section 1. The admission of attorneys to the practice of the profession of law is a judicial function. All individuals who seek the privilege of practicing law in the State of Florida shall submit to the Florida Bar Examination.

Thus, there is no reciprocity in Florida for attorneys licensed in other states.

Currently, there are thirteen states out of the fifty states that require attorneys to take the full bar examination. The states are as follows:

1. Alabama - There is an exception to the full bar examination for law professors;

2. Arizona - Hoover v. Ronwin, 80 L Ed 2d 590

(1984), arose out of this state; 3. Florida; 4. Georgia; 5. Hawaii; 6. Idaho; 7. Louisiana 8. Nevada - There are two (2) exceptions to the full examination for attorneys rule: a. Admission on motion for faculty of National Judicial College and b. Exceptions in exceptional cases. See 14 ALR 4th 31; 9. New Hampshire - The United States Supreme Court in Supreme Court of New Hampshire v. Piper, 53 LW 4238 (March 4, 1985) examined the admission rules of that state. Piper, an attorney in Vermont, lived 400 yards from the New Hampshire border. The Court held the residency requirement unconstitutional as a violation of the Privileges and Immunities clause of Art. IV, Sec. 2; 10. New Jersey; 11. South Carolina - An exception is made to the full bar examination for law professors; 12. South Dakota; 13. Washington.

Thus, there are only thirteen (13) states (26%) out of the fifty (50) states that

require attorneys to take the full bar examination. See Comprehensive Guide to Bar Admission Requirements, Published by the American Bar Association Section of Legal Education and Admissions to the Bar and the National Conference of Bar Examiners (1984), page 34. Out of the thirteen states, some of these states allow selected persons an exception to the full bar examination such as law professors, Faculty of National Judicial College or exceptions for "exceptional cases".

74% of the 50 states (37) allow an attorney admission to the bar without the full examination.

A close examination of the thirteen states will reveal that many of these states are popular among vacationing and semi-retired lawyers.

Mr. Robert L. Doan, Assistant General Counsel for a large multistate corporation,

Union Carbide Corp. in Danbury, Conn., discussed the reason for the restrictive policy of the thirteen states in a National legal newspaper, Legal Times (May 23, 1983) as follows:

> Part of the fear is that relaxing admission requirements would make it easier for out-of-state firms to open offices in Connecticut and that corporate counsel might do routine, personal legal work for executives....Doan noted that many of the states that require testing across the board are popular among vacationing and semi-retired lawyers, and he argued that their restrictive admissions requirements reflected residents' fears of competition.
>
> Doan objects to the examination idea because it requires an applicant to take valuable time away from practice to study subjects no longer relevant to the areas in which he has chosen to specialize - and most lawyers specialize to some extent. "The loss of income can be sufficiently discouraging that some lawyers never do it," he said, arguing that imposing exam requirements on experienced lawyers is "generally perceived as designed to inhibit... the ability of lawyers to practice where they choose. (Emphasis supplied).

It is submitted that it is not constitutional and is a violation of the Sherman Act to require attorneys to take the full

examination just because certain states are popular among vacationing and semi-retired lawyers.

The United States Supreme Court in Supreme Court of New Hampshire v. Piper, 53 LW 4238 (March 4, 1985) discussed the residency requirement of New Hampshire. Justice Powell wrote the opinion for the Court in which Burger, C.J., and Brennan, Marshall, Blackmun, Stevens, and O'Connor, J.J., joined, White filed an opinion concurring in the result, Rehnquist, J. filed a dissenting opinion.

> The Supreme Court of New Hampshire offers several justifications for its refusal to admit non residents to the bar. It asserts that non-resident members would be less likely: (i) to become, and remain, familiar with local rules and procedures; (ii) to behave ethically; (iii) to be available for court proceedings; and (iv) to do pro bono and other volunteer work in the State. [18] We find that none of these reasons meets the test of "substantiality", and that the means chosen do not bear the necessary relationship to the State's objectives.

The Court in footnote 18 stated:

> A former president of the American Bar Association has suggested another possible reason for the rule: "Many of the states that have erected fences against out-of-state lawyers have done so primarily to protect their own lawyers from professional competition." Smith, Time for a National Practice of Law Act, 64 A.B.A.J. 557 (1978). This reason is not "substantial". The Privileges and Immunities Clause was designed primarily to prevent such economic protectionism.(Emphasis supplied)

The Court in Supreme Court of New Hampshire v. Piper, supra, one of the thirteen full bar exam states, indicated that economic protectionism was the reason for the residency requirement barrier to out of state lawyers and held same unconstitutional as a violation of the Privileges and Immunities Clause. See 50 Wash. L.R. 699 (1975) for a discussion of economic protectionism.

This economic protectionism of requiring licensed attorneys to take the full bar examination is having the same effect as the

minimum fee schedules had in Goldfarb v. Virginia State Bar, 421 U.S. 773 (1975). That is,it is reducing competition for legal business and restraining trade among the states.

The Sherman Act in 15 U.S.C. 1 provides:

> Trusts, etc., in restraint of trade illegal; penalty
>
> Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign notions, is declared to be illegal. Every person who shall make any contract or engage in any combination or conspiracy hereby declared to be illegal shall be deemed guilty of a felony, and, on conviction thereof, shall be punished by fine not exceeding one million dollars if a corporation, or, if any other person, one hundred thousand dollars, or by imprisonment not exceeding three years, or by both said punishments, in the discretion of the court.

Requiring that attorneys from other states take the entire Florida Bar Examinatin is intended to restrain trade or commerce among the several states. Said examination

artifically reduces the number of competing attorneys in the State of Florida.

Moreover, the scoring system on the Florida Bar Examination gives graduates of Florida law schools an advantage over attorneys from out of State. The Florida Student who has just finished three years of concentrated study on Florida subjects can get a low grade on the Multistate examination but a high grade on the Florida examination and by averaging the grades he can pass the examination.

Moreover, the Florida examination tests heavily on narrow esoteric exceptions to general rules. This constitutes a trap for the out of state attorney trying to move to Florida.

Florida law students file their application to take the Florida Bar examination when they <u>begin</u> law school. The attorney files his application just before he takes the examination. Hense, the students' application will be three years old by the time the student takes the bar examination, whereas the attorneys'

application will be new. Therefore, there is a way of distinquishing the Florida applicant from the out of state applicant.

Further evidence of intent to restrain trade is provided in the Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article V, Section 1 and 2 and Article IV, Section 2 and 3. Said rules require an attorney to pay $720.00 to take the Florida Bar examination. However, the law student is only required to pay $240.00 or less to take the exam. Requiring a licensed attorney to pay three times as much as a law student to take the exam is clearly intended to prevent or chill attorneys from taking the Florida Bar examination and thereby restrain trade among the states.

Interstate Commerce is clearly affected by not giving attorneys reciprocity to practice in Florida because persons such as attorneys for large national corporations cannot represent their Florida clients with-

out becoming a member of the Florida bar.

The pro hac vice statute is not a remedy in that said statute is discretionary with the Judge. Also, said statutes historically have not been effective especial when you represent an unpopular client. See Leis v. Flynt, 439 US 438 (1979) and Brokel and Loh, Regulating the Multistate Practice of Law, 50 Wash L Rev page 702 (1975).

Parker v. Brown, 317 US 341 (1943) established the State action doctrine that held that State Action has immunity from the Sherman Act. The action in this case is that of the Florida Board of Bar Examiners and not the Florida Supreme Court. Hense, Parker v. Brown, is inapplicable.

Justice Stevens, White and Blackmun dissenting in Hoover v. Ronwin, 80 L Ed 2d 590 (1984) cited a law review article Gellhorn, The Abuse of Occupational Licensing 44 U Chi L Rev 6 (1976). Said article at

page 20 discussed the applicability, vel non, of Parker v. Brown, supra, as follows:

> The restrictive practices of licensed groups are usually designed within the groups rather than imposed on them from the outside. To the extent that this is so, Parker v. Brown gives no protection against the anti-trust laws, for the Supreme Court has differentiated between state action and private action wearing a mask.

The action of the Florida Board of Bar Examiners is private action. This is action of a subordinate body; not the Supreme Court.

In the instant case the activity at issue is not directly that of the legislature or the Supreme Court but is conducted by others, the Florida Board of Bar Examiners.

The Court in Hoover v. Ronwin, 80 L Ed 590 (1984) stated at page 600:

> If the replacing of entirely free competition with some form of regulation or restraint was not authorized or approved by the State than the rationale of Parker is inapposite. As a result, in cases involving the anti competitive conduct of a nonsovereign state representative the Court

> has required a showing that the conduct is pursuant to a "clearly articulated and affirmatively expressed state policy" to replace competition with regulation. . . . The Court also has found the degree to which the state legislature or Supreme Court supervises its representative to be relevant to the inquiry.

The above requirements have not been met by the Florida Board of Bar Examiners. There is no clearly articulated and affirmatively expressed state policy to replace competition with regulation. Also, there is no direct supervision of the Florida Board of Bar Examiners by the Florida Supreme Court The bar exam results come from the Florida Board of Bar Examiners and not from the Florida Supreme Court. Also, the Florida Supreme Court does not grade bar examination papers. This function is also handled by the Florida Board of Bar Examiners.

Moreover, the Florida Board of Bar Examiners continues to make the Florida Bar Exam more difficult. In 1985, the Florida Board of Bar Examiners added four (4) more subjects to the examination: 1. Family Law; 2. Equity; 3. Florida Criminal Law; and 4. Florida Contracts. See In Re: Petition of

Florida Board of Bar Examiners for Amendment of the Rules of the Supreme Court of Florida Relating to admissions to the Bar. No. 63,603 (October 20, 1983).

In 1983 during the Winter examination only 53% of the persons taking the exam passed and in the Summer only 73% passed. National Bar Examination Digest (1984).

III DENYING AN EXPERIENCED ATTORNEY RECIPROCITY AND REQUIRING HIM TO TAKE A GENERAL BAR EXAMINATION CONSTITUTES UNFAIRNESS AND IS A DENIAL OF DUE PROCESS UNDER THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

In Application of Stephenson, 516 P. 2d 1387 (Alaska 1973) a case decided by the Alaska Supreme Court, an attorney who had practiced law in Oklahoma for 35 years moved to Alaska but was denied admission by reciprocity by the Board of Governors because he was not a graduate of an accredite law school.

Stephenson asserted at page 1388 that:

> ... a general bar examination is unfair to an experienced attorney... that such examinations are designed to test the knowledge of recent graduates who have just completed years of study covering a wide variety of subjects. The experienced practitioner on the other hand normally tends to specialize to a certain degree, so that over the years he no longer retains in mind details pertaining to other subjects. It thus becomes more difficult for him to pass a general bar examination as he practices longer. Applicant contends that he should be entitled to take a special "lawyer's examination" (Emphasis supplied)

The Alaska Supreme Court at page 1390 stated:

> We must now decide whether the Board of Governors was correct in its determination that the Multi-state Bar Examination portion of the July 1973 bar examination constituted an attorney bar examination. We are of the opinion that it did not. We are of the further view that Stephenson is correct in his contention that the Alaska Section of the July 1973 examination most nearly accords with the concept of an attorney bar examination envisioned by this court in In re Stephenson.
>
> In In re Stephenson, we alluded to the fact that the new bar admission rules provided for a separate attorney bar examination and that Stephenson could now "take an examination to be designated for practicing lawyers, rather than being subjected to any possible unfairness involved in requiring him to pass the general examination. Based on our understanding of the content of the Multi-state Bar Examination, we are unable to characterize this examination as one designed specifically for practicing attorneys.
>
> The Multi-State Bar Examination is prepared and graded by Educational Testing Service. It is a 200 question multiple choice examination covering five general law subjects - contracts, torts, criminal law, property and evidence.

> The examinee must choose the correct answer from four choices for each question. The answers are ostensibly based on the majority rule as to a given issue. The questions are geared to recent law school graduates by requiring knowledge of narrow academic principles of law rather than principles used in the general practice of law. Given the pressing time constraints of the Multi-State Bar Examination and the format of the questions employed, we think the Multi-State is closer to a general bar examination than it is to an attorney bar examination designed specifically for practicing lawyers.

The Court at page 1391 continues as follows:

> Further, our holding in the instant case is made with the understanding that, under Alaska Bar Rules, Part I, Rule 2, Section 2, the Board of Governors has the duty and authority to prescribe, for future attorney bar examinations, the content of a fair attorney bar examination designed specifically to test the knowledge of the practicing lawyer.

The Court continues at page 1391 as follows:

> Under the new bar admission rules, the Board of Governors could properly decide that a fair attorney bar examination must require demonstration of a knowledge of Alaska law and general principles of law. On the other hand, given the particular factual and

> procedural context of this case, we hold that the Multi-State Bar Examination was not an attorney bar examination as contemplated by this court in In re Stephenson.

The Court continues at page 1391:

> We conclude that in the particular factual circumstances of this case, the Alaska Section of the Alaska Bar Examination given in July of 1973 more nearly approaches the attorney bar examination contemplated in In re Stephenson and provided for by Alaska Bar Rules, Part I, Rule 2, Section 2. Therefore, since Stephenson achieved a passing grade on the Alaska section of the bar examination, an order should be entered certifying him to this court for admission to the Bar of the State of Alaska.

The Court in footnote 12 clearly states the holding of the case as follows:

> Our holding as to the inappropriateness of the use of the Multi-state Bar Examination renders a remand unnecessary.

Thus, Application of Stephenson, supra, is a clear statement from the Supreme Court of Alaska regarding the unfairness of making practicing lawyers take the Multi State Bar Examination as Florida requires. Said examination is geared to the recent law school graduate rather than the experienced attorney.

It tests knowledge of narrow academic principles of law rather than principles used in the general practice of law.

The Stephenson case, supra, specifically discussed the unfairness of the Multi-State Bar Examination but also indicated the hardship on practicing attorneys taking a general bar exam. Petitioner spent approximately $1500.00 to take the Florida Bar exam. Moreover, petitioner did not have the time to study that the law students he was competing against had because petitioner had to work a full time job to support his family.

IV. THE DENIAL OF RECIPROCITY BY FLORIDA TO LICENSED ATTORNEYS (PURSUANT TO ARTICLE I, SECTION 1 OF THE RULES OF THE SUPREME COURT OF FLORIDA RELATING TO ADMISSIONS TO THE BAR) IS A VIOLATION OF THE AMERICAN BAR ASSOCIATION'S CODE OF PROFESSIONAL RESPONSIBILITY THAT DISCOURAGES TERRITORIAL LIMITATIONS ON THE PRACTICE OF LAW AND IS A VIOLATION OF THE PRIVILEGE AND IMMUNITIES CLAUSE OF THE FOURTEENTH AMENDMENT.

The Code of Professional Responsibility indicates that rules such as the Florida requirement that licensed attorneys take the Florida Bar Exam should be discouraged by the legal profession. The American Bar Association Code of Professional Responsibility provides as follows:

> EC 3-9 Regulation of the practice of law is accomplished principally by the respective states. Authority to engage in the practice of law conferred in any jurisdiction is not per se a grant of the right to practice elsewhere, and it is improper for a lawyer to engage in practice where he is not permitted by law or by court order to do so. However, the demands of business and the mobility of our society pose distinct problems in the regulation of the practice of law by the states. In furtherance of the public interest, the legal profession should discourage

> regulation that unreasonably imposes territorial limitations upon the right of a lawyer to handle the legal affairs of his client or upon the opportunity of a client to obtain the services of a lawyer of his choice in all matters including the presentation of a contested matter in a tribunal before which the lawyer is not permanently admitted to practice.

The above provision was cited by the United States Supreme Court in Leis v. Flynt, 439 U.S. 438 (1979) dissenting opinion page 455 footnote 21. The majority opinion at page 422 also discusses the high mobility of the bar and the trend toward specialization. Also, Florida Rules of the Supreme Court Relating to Admissions to the Bar, Art. I, Sec. 1 are noted in footnote 5 of the majority opinion in Leis v. Flynt, supra.

ABA Opinion 316 (1967) quoted in footnote 8 under EC 3-9 provides:

> Much of clients' business crosses state lines. People are mobile, moving from state to state. Many metropolitan areas cross state lines. It is common today to have a single economic and social community involving more than one state. The business of a single client may involve legal problems in several states.

Thus, the above opinion indicates that the practice of law is becoming more national in scope.

Footnote 9 under EC 3-9 provides:

> "(W)e reaffirmed the general principle that legal services to New Jersey residents with respect to New Jersey matters may ordinarily be furnished only by New Jersey Counsel; but we pointed out that there may be multistate transactions where strict adherence to this thesis would not be in the public interest and that, under the circumstances, it would have been not only more costly to the client but also "grossly impractical and inefficient to have had the settlement negoiations conducted by separate lawyers from different states." In re: Estate of Waring, 47 N.J. 367, 376, 221 A. 2d 193, 197 (1966).

This case clearly indicates why it is important attorneys should be given reciprocity to be able to practice across state lines.

The Model Rules of Professional Conduct of the American Bar Association adopted on August 2, 1983 also indicate the need to practice in more than one state:

Rule 8.5 Jurisdiction

* * *

Comment:

> In modern practice lawyers frequently act outside the territorial limits of the jurisdiction in which they are licensed to practice, either in another state or outside the United States.

Because of this modern trend of lawyers to practice outside the jurisdiction in which they are licensed it is important that reciprocity be liberalized and attorney exams be eliminated.

The right to practice law is a fundamental right and is protected by the Privileg and Immunities Clause, Article IV, Section 2, that provides:

> The citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

* * *

To deny a fundamental right there must be a substantial reason. There is no substantial reason for denying attorneys reciprocity in Florida.

In Supreme Court of New Hampshire v. Piper, 53 L W 4238 (March 4, 1985) the Supreme Court held that the New Hampshire rule prohibiting admission of attorneys who are not state residents at time of admission violates the Privileges and Immunities Clause. The Court also indicated the practice of law is a fundamental right and cannot be infringed without substantial reasons.

Florida has not given substantial reasons for denying attorneys reciprocity.

Moreover, the practice of law is a right as indicated by Supreme Court of New Hampshire v. Piper, supra, not a privilege.

The Rules of the Supreme Court of Florida Relating to Admissions to the Bar are inconsistent with Piper, supra, and consider the practice of law a privilege. Said rules provide in Article I, Florida Board of Bar Examiners:

> Section 1. . . .All individuals who seek the privilege of practicing law in the State of Florida shall submit to the Florida Bar Examination. (Emphasis supplied)

The practice of law is not a privilege but a right and hense any infringement of said right must be for substantial reasons. Florida has not provided substantial reasons.

V. PETITIONER, A LICENSED ATTORNEY, IS BEING DENIED HIS CONSTITUTIONAL FUNDAMENTAL RIGHT TO TRAVEL BY NOT BEING GIVEN RECIPROCITY TO PRACTICE HIS PROFESSION IN FLORIDA.

The right to travel is a fundamental right and therefore the strict scrutiny equal protection test must be used to test the state action that penalizes or unduly burdens fundamental constitutional rights.

See Shapiro v. Thompson, 394 U.S. 618 (1969); Zobel v. Williams, 102 S.Ct. 2309 (1982); Kusper v. Pontikes, 414 U.S. 51 (1973).

In Shapiro v. Thompson, 394 U.S. 618 (1969) the Court through Justice Brennan discussed the right to travel as follows:

> This Court long ago recognized that the nature of our Federal Union and our constitutional concepts of personal liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement....
>
> We have no occasion to ascribe the source of this right to travel interstate to a particular constitutional provision.

Later the Court stated:

> (In moving), appellees were exercising a constiutional right, and any classification which serves to penalize the exercise of that right, unless shown to be necessary to promote a compelling governmental interest, is unconstitutional. (Emphasis in original)

Hense, the Court clearly established a constitutional right to travel.

In Gellhorn, The Abuse of Occupational Licensing, 44 U Chi L Rev 6 (1976) the author states:

> Americans have traditionally thought themselves free to pursue happiness wherever it might be found. Mobility - lateral as well as upward and sometimes downward - has been a characteristic of our society, and many of us think it has made for a healthier country, one in which parochialism has yielded to the inflow of new populations, new ideas, new techniques. Local licensure tends in the opposite direction toward enclosure within fixed boundaries. Requirements unrelated to suitability and proficiency probably will not withstand judicial scrutiny, but until a frustrated applicant chooses to take a case to court - or until conscientious legislators repeal obnoxiously discriminatory statutes - the bad laws remain as threats to occupational freedo

The above article was cited in Hoover v. Ronwin, 80 L Ed 2d 59 in the dissent by Justice Stevens at page 610.

Clearly the denial of reciprocity by Florida to licensed attorneys is a threat to occupational freedom. Moreover, the denial of reciprocity is clearly a violation of an attorneys right to travel as established by Shapiro v. Thompson, supra.

VI. PETITIONERS DENIAL OF ADMISSION TO THE BAR OF FLORIDA BY RECIPROCITY IS A VIOLATION OF THE FULL FAITH AND CREDIT CLAUSE OF THE UNITED STATES CONSTITUTION.

The Full Faith and Credit Clause of the United States Constitution is contained in Article IV, Section 1 as follows:

> Full Faith and Credit shall be given in each State to the public Acts, Records and judicial Proceeding of every other State . . . .

Petitioner has been found qualified to practice law by a judgment of the Supreme Court of Louisiana. The State of Florida refuses to give Full Faith and Credit to the judgment of the Supreme Court of Louisiana that petitioner is qualified to practice law in Florida.

In 64 A.B.A.J 557 (1978) Mr. Chesterfield Smith, president of the American Bar Association in 1973-74 in an article "Time for a National Practice of Law Act: Requiring Lawyers to pass a bar examination in each state in which they wish to practice regularly is an impractical restriction." Mr. Smith

discusses, inter alia, the Full Faith and Credit Clause as follows at page 557:

> Many of the states that have erected fences against out of state lawyers have done so primarily to protect their own lawyers from professional competition. They have not undertaken to determine whether the out-of-state lawyer is better or worse than the resident lawyer or whether the standard for bar admission in the other state is higher or lower than their own.

Mr. Smith further states at page 558 of said article:

> The better a lawyer is in one branch of the law, the more specialized in a particular area of the law practice, the greater the lawyer's difficulty in gaining admission through a general bar examination. A state that chills interstate bar admissions is saying that it prefers the systematized knowledge of a recent graduate of law school to the specialized skills acquired only through extensive experience in the courtroom, and the negotiating conference or in the law office.

Mr. Smith continues at page 560:

> But even acknowledging that a majority of lawyers do not agree with me, I think that something has to give - the chilling of interstate bar admissions is in conflict with the long-range economic interests of the legal profession and the nation. When one state can refuse to give full faith and credit to the order of a court of last resort

of a sister state finding a person qualified to practice law, the ability of the legal profession to serve its national clients adequately is substantially and gravely impaired. That one state has chilled the free flow of commerce among the states.

VII. ATTORNEYS ARE DISCOURAGED FROM TAKING THE FLORIDA BAR EXAMINATION BY A HIGHER FEE FOR ATTORNEYS THAN LAW STUDENTS. THIS IS A DENIAL OF EQUAL PROTECTION.

Petitioner is denied equal protection under the Fourteenth Amendment to the United States Constitution in that attorneys must pay a $720.00 fee to take the Florida Bar Examination whereas non attorneys are only required to pay $240.00 or less to take the Florida Bar Exam. Rules of the Supreme Court of Florida Relating to Admissions to the Bar, Article V, Section 1 and Section 2. Said articles provide as follows:

> Article V
> Schedule of Fees.
>
> The following fees shall be paid by the applicant. No fees shall be refunded, except that the Board may, in its discretion and upon request, refund all or a portion of the fees of an applicant who dies before taking the oath of admission.
>
> Section 1. The application of applicants described in Article IV, Section 2, shall be accompanied by a fee of . . . . . $240.00.

Section 2. The application of applicants described in Article IV, Section 3, shall be accompanied by a fee of . . . . . .$720.00.

The above provisions refer to the following rules:

Article IV

Applications

* * *

Section 2. Applicants for admission into the General Bar Examination and applicants for admission into the Florida Bar who have not been admitted to the Bar in any other jurisdiction for a period in excess of twelve months preceding the filing of an Application for Admission to The Florida Bar (time spent in military service of the United States not be be reckoned as part of said twelve months) shall accompany the initial application with a fee of $240.00 as specified under Article V, Section 1, and under such other fee as may be required under Article II.

Section 3. All applicants for admission into the General Bar Examination and applicants for admission into The Florida Bar except those described in Article IV, Section 2 shall accompany the initial application with a fee of $720.00, as specified under Article V, Section 2.

The above provisions require the attorney to pay $720.00 to sit for the bar exam but only require $240.00 for the law student to take the Florida Bar Exam. The attorney must pay three times the fee of the law student but no reason is given for this discrimination. This is obviously intended to discourage attorneys from moving to Florida.

The above regulations violate the XIV Amendment to the United States Constitution. Same provides in part:

> Section 1. . . . No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

The above Supreme Court Rules deny attorneys equal protection of the law.

The rules put attorneys in one category and law school graduates in another category and treat the categories differently without any rational reason given.

VIII. THE DENIAL OF RECIPROCITY TO A LICENSED ATTORNEY VIOLATES THE COMMERCE CLAUSE OF THE UNITED STATES CONSTITUTION.

The Commerce Clause of the United States Constitution is contained in Article I, Section 8 and provides:

> Section 8. The Congress shall have the power . . . ;
>
> * * *
>
> To regulate Commerce . . . among the several states. . . .

Not giving lawyers reciprocity in Florida has a substantial impact on interstate commerc

Mr. Chesterfield Smith, president of the A.B.A. in 1973-74 in 64 A.B.A.J. discusses the need for interstate reciprocity as follows at page 559:

> It is in the national interest and the interest of nationwide consumers of legal services that restrictive practices and state barriers be eliminated and interstate reciprocity be broadened. Although the lawyers in one state may benefit temporarily from shutting out others, the legal profession in the long run must find its economic prosperity in national union, not in state division.

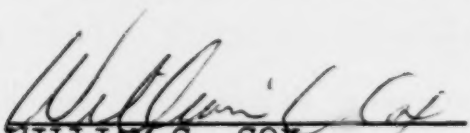
Clearly the states that require all lawyers to take a bar exam such as Florida have created a substantial barrier to interstate commerce. A president of a corporation thinking of moving to Florida will be hesitant to do so knowing its legal department will not be given reciprocity in Florida.

CONCLUSION

This case presents important questions concerning the practice of law and the right of an attorney to be able to travel to seek better employment opportunities.

To resolve these questions the writ should be granted.

Respectfully submitted,



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Attorney for Petitioner
in proper person

CERTIFICATE OF SERVICE

I, WILLIAM C. COX, hereby certify that I have on April 30, 1985, by United States Mail, postage prepaid, served copies of the foregoing petition upon all parties required to be served, their names and addresses being as follows:

Sid J. White, Clerk
Supreme Court of Florida
Supreme Court Building
Tallahassee, Florida 32301-8167

John H. Moore, Executive Director
Florida Board of Bar Examiners
1300 East Park Avenue
Tallahassee, Florida 32301-8051

C. Graham Carothers
Attorney of the Board
Florida Board of Bar Examiners
1300 East Park Avenue
Tallahassee, Florida 32301-8051

William C. Cox
WILLIAM C. COX

SUPREME COURT OF FLORIDA

Tuesday, February 5, 1985

FLORIDA BOARD OF BAR EXAMINERS, *

Re: WILLIAM C. COX * CASE NO. 66,283

* * * * * * * * * * * * * * * * * * *

Upon consideration of the Petition for Reconsideration filed in the above cause by William C. Cox, and response thereto,

IT IS ORDERED that said Petition be and the same is hereby denied.

ADKINS, Acting C.J., OVERTON, ALDERMAN, MCDONALD AND EHRLICH, JJ., concur

A True Copy

TEST:

/s/ Sid J. White
Clerk, Supreme Court

TC
cc: William C. Cox, Esquire
Hon. John H. Moore
C. Graham Carothers, Esq.